

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative and Judicial Review Branch**

14th St. Deli Corp.,

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0251918

FINAL AGENCY DECISION

The U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) finds that there is sufficient evidence to support the determination by the Retailer Operations Division to impose a permanent disqualification from participating as an authorized retailer in the Supplemental Nutrition Assistance Program (SNAP) against 14th St. Deli Corp. (hereinafter “Appellant”).

ISSUE

The issue accepted for review is whether the Retailer Operations Division, in its administration of SNAP, took appropriate action, consistent with Title 7 Code of Federal Regulations (CFR) Part 278, when it imposed a permanent disqualification against 14th St. Deli Corp.

AUTHORITY

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may... file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

14th St. Deli Corp. was initially authorized to participate in SNAP on August 5, 2020. In a letter dated November 30, 2022, the Retailer Operations Division charged Appellant with trafficking, as defined in Section 271.2 of the SNAP regulations, based on a series of irregular SNAP transaction patterns that occurred between the months of April 2022 through September 2022 and information obtained during a visit to the store by an FNS contractor on October 22, 2022. The attachments enclosed with the charge letter specified the questionable and unusual SNAP transactions indicative of trafficking that were conducted at Appellant’s firm during the review period. The letter noted that the penalty for trafficking is permanent disqualification, as provided by 7 CFR § 278.6(e)(1). It informed Appellant of the right to respond to the charges within 10

days of receipt to explain the irregular SNAP transaction patterns and provided that Appellant may request a civil money penalty (CMP) in lieu of permanent disqualification for trafficking within 10 days of receipt of the charge letter, under the conditions specified in 7 CFR § 278.6(i).

The record reflects that on December 9, 2022, Appellant's representative requested an extension of time for providing a response to the letter of charges. The Retailer Operations Division granted the extension.

By email on January 3, 2023, Appellant, through its representative, provided a written reply to the charge letter. In its response, Appellant denied trafficking and provided information about the store's location, stock, business practices, and employees. Appellant stated it complies with all SNAP rules but cannot monitor customer shopping patterns. Appellant argued using transaction records as the sole source of determining whether a store is engaging in trafficking is inadequate. Finally, Appellant stated that a large portion of its business is SNAP sales and requested a six-month disqualification instead of a permanent disqualification.

After evaluating Appellant's response and further considering the evidence in the case, the Retailer Operations Division concluded that trafficking had occurred as charged and issued a determination letter dated January 6, 2023. This letter informed Appellant that it would be permanently disqualified from SNAP upon receipt of the letter in accordance with 7 CFR § 278.6(c) and § 278.6(e)(1). The letter also stated that the Retailer Operations Division considered Appellant's eligibility for a trafficking CMP according to the terms of Section 278.6(i) of the SNAP regulations, but that a CMP was not appropriate because Appellant failed to submit sufficient evidence to demonstrate that the firm had established and implemented an effective compliance policy and program to prevent SNAP violations.

In an email dated January 13, 2023, Appellant, through counsel, appealed the Retailer Operations Division's determination by requesting an administrative review. The request was granted.

STANDARD OF REVIEW

In an appeal of adverse action, such as disqualification from SNAP participation, an appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is found in the Food and Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(a) and (e)(1)(i) establish the authority upon which a permanent disqualification may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(b)(3)(B) states, in part:

...[A] disqualification under subsection (a) shall be...permanent upon...the first occasion or any subsequent occasion of a disqualification based on the purchase of coupons or trafficking in coupons or authorization cards by a retail food store or wholesale food concern or a finding of the unauthorized redemption, use, transfer, acquisition, alteration, or possession of EBT cards...

7 CFR § 278.6(a) states, in part:

FNS may disqualify any authorized retail food store...if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, **inconsistent redemption data, [or] evidence obtained through a transaction report under an electronic benefit transfer system...** [Emphasis added.]

7 CFR § 278.6(e)(1)(i) states:

FNS shall disqualify a firm permanently if personnel of the firm have trafficked as defined in § 271.2.

7 CFR § 271.2 states, in part:

Trafficking means: The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone...

7 CFR § 271.2 states, in part:

Eligible foods means: Any food or food product intended for human consumption except alcoholic beverages, tobacco and hot food and hot food products prepared for immediate consumption...

7 CFR § 278.6(b)(1) states, in part:

Any firm considered for disqualification...under paragraph (a) of this section...shall have full opportunity to submit to FNS information, explanation, or evidence concerning any instances of noncompliance before FNS makes a final administrative determination. The FNS regional office shall send the firm a letter of charges before making such determination. The letter

shall specify the violations or actions which FNS believes constitute a basis for disqualification... The letter shall inform the firm that it may respond either orally or in writing to the charges contained in the letter within 10 days of receiving the letter...

7 CFR § 278.6(c) states, in part:

The letter of charges, the response, and any other information available to FNS shall be reviewed and considered by the appropriate FNS regional office, which shall then issue the determination. In the case of a firm subject to permanent disqualification under paragraph (e)(1) of this section, the determination shall inform such a firm that action to permanently disqualify the firm shall be effective immediately upon the date of receipt of the notice of determination from FNS, regardless of whether a request for review is filed in accordance with part 279 of this chapter.

7 CFR § 278.6(b)(2)(ii) states, in part:

Firms that request consideration of a civil money penalty in lieu of a permanent disqualification for trafficking shall have the opportunity to submit to FNS information and evidence... that establishes the firm's eligibility for a civil money penalty in lieu of a permanent disqualification in accordance with the criteria included in § 278.6(i). This information and evidence shall be submitted within 10 days, as specified in § 278.6(b)(1).

7 CFR § 278.6(b)(2)(iii) states:

If a firm fails to request consideration for a civil money penalty in lieu of a permanent disqualification for trafficking and submit documentation and evidence of its eligibility within the 10 days specified in § 278.6(b)(1), the firm shall not be eligible for such a penalty.

7 CFR § 278.6(i) states, in part:

FNS may impose a civil money penalty in lieu of a permanent disqualification for trafficking ... if the firm timely submits to FNS substantial evidence which demonstrates that the firm had established and implemented an effective compliance policy and program to prevent violations of the Program...

SUMMARY OF CHARGES

FNS charged 14th St. Deli Corp. with trafficking based on an analysis of FNS records, which included observed store characteristics, recorded food stock, and store pricing gathered during a store visit, as well as Electronic Benefit Transfer (EBT) transaction data for April 2022 through

September 2022. The attachments enclosed with the charge letter reflected the following transaction patterns, which may be indicators of trafficking:

- **Charge Letter Attachment 1:** Multiple transactions made from the accounts of individual SNAP households within a set time period.
- **Charge Letter Attachment 2:** EBT transactions that were large based on the observed store characteristics and recorded food stock.

APPELLANT'S CONTENTIONS

- Appellant requests that the review officer consider the store's original reply to the charges as submitted to the Retailer Operations Division.
- There was no credible evidence to show beyond a reasonable doubt that violations occurred.
- Appellant requests a civil money penalty (CMP) in lieu of a permanent disqualification.
- Permanent disqualification from the SNAP is too harsh of a punishment.
- The owner was not aware of SNAP violations occurring at the store.
- Appellant has trained the store's staff in the proper handling of SNAP transactions.

These explanations may represent only a brief summary of Appellant's contentions. However, in reaching a decision, full consideration has been given to all contentions presented and evidence submitted.

ANALYSIS AND FINDINGS

This review examines the relevant information regarding the Retailer Operations Division's trafficking determination. The record must contain evidence sufficient to raise a presumption that trafficking occurred. In a trafficking determination, this evidence includes SNAP transaction data, considered together with other available information, such as store visit observations, the location and characteristics of competitor firms, and household shopping patterns. Once the presumption is established, Appellant bears the burden of providing relevant evidence to support a conclusion, considering the record as a whole, that it did not engage in trafficking. If Appellant fails to show this, the case will be sustained.

Retailers are provided opportunities to submit evidence accompanied by explanations of the legitimacy of questionable transactions, both to the Retailer Operations Division and here on administrative review. Without supporting evidence and rationale, assertions that the firm has not violated program rules do not constitute valid grounds for overturning the determination.

Based on the evidence in this case, the SNAP transactions listed in the November 30, 2022, charge letter were indicative of trafficking. Appellant has not provided reasonable explanations supported by sufficient credible and convincing evidence to demonstrate that these transactions were more likely due to reasons other than trafficking. Accordingly, the permanent disqualification is sustained. Discussed below are elements of the Retailer Operations Division's record, Appellant's contentions, and the findings of this review.

Lack of Supporting Evidence

Appellant contends the Retailer Operations Division's trafficking determination was based on presumption and EBT transaction data alone, without credible, corroborating evidence. Further, Appellant argues there is no concrete evidence to assert, beyond a reasonable doubt, that the firm actually committed illegal transactions.

With regard to this contention, this review concedes that a conclusion of trafficking cannot be drawn from EBT data alone, nor would it be possible to do so in a case based primarily on inconsistent redemption data. It is acknowledged that USDA employs a computerized fraud detection tool to identify EBT transactions that form patterns having characteristics indicative of trafficking. However, this tool does not, by itself, determine or conclude that trafficking has occurred. The Retailer Operations Division must still analyze the transaction data and patterns with other factors, such as observations from a store visit, an analysis of customer shopping behavior, and a comparison with similar stores in the area, and then render a determination as to whether or not the questionable transactions were, more likely than not, the result of trafficking.

The legality of this method is identified in 7 CFR § 278.6(a), which states, in part, "FNS may disqualify any authorized retail food store ... if the firm fails to comply with the Food and Nutrition Act of 2008, as amended, or this part. **Such disqualification shall result from a finding of a violation on the basis of evidence that may include facts established through on-site investigations, inconsistent redemption data, [or] evidence obtained through a transaction report under an electronic benefit transfer system**" [Emphasis added.]

Prior to a disqualification determination, the accused firm is given ample opportunity to reply to the charges and provide any information it wishes in order to justify the transaction activity detailed in the charge letter.

This review has thoroughly examined the documentation and information provided by the Retailer Operations Division and has found no evidence to suggest that the agency simply manufactured numerical data and declared it to be trafficking. From all indications, the Retailer Operations Division obtained the EBT data, found it to be suspicious in comparison to other area stores with similar characteristics, and then completed a thorough analysis before concluding that trafficking was likely occurring.

It is important to restate here that in an appeal of adverse action, the onus is on Appellant to prove by a preponderance of the evidence that the administrative action should be reversed. Despite being given a specific list of questionable transactions in the charge letter, Appellant has not offered any compelling evidence, such as itemized cash register receipts or other transaction records, to show that the specific transactions in question were legitimate purchases of eligible food. As such, Appellant's contentions related to FNS's use of EBT data provide no basis for dismissing the charges or for mitigating the penalty imposed.

Store Characteristics

In reaching a disqualification determination, the Retailer Operations Division considered information obtained during the October 22, 2022, store visit conducted by a USDA contractor to observe Appellant's operation, stock, and facilities. This store visit information was used to ascertain if there were justifiable explanations for the firm's irregular SNAP transaction patterns. The store visit report documented the store size, description, and characteristics. The report also described the store's checkout counter space area and noted the effect of any limitations of the available surface area on placing large purchases or processing more than one customer at a time.

There was no indication that SNAP households were inclined to visit the store regularly to purchase large quantities of grocery items. Given the available inventory, there was no sign that Appellant would be likely to have SNAP redemption patterns that differed significantly from those of similarly-sized competitors.

SNAP Transaction Analysis

While SNAP households are not limited in the number of times they may use their SNAP benefit card or how much eligible food they may purchase in SNAP transactions, government analyses have found that stores likely trafficking SNAP benefits have particular transaction patterns or characteristics that are inconsistent with the transaction patterns and characteristics of similarly situated stores. The charge letter attachments specify the unusual transactions and transaction patterns found at Appellant's store.

Charge Letter Attachment 1: Multiple transactions were made from the accounts of individual SNAP households within a set time period. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Abnormally repetitive transactions over short periods of time at rates substantially greater than expected can be an indication that trafficking violations are occurring.

5 U.S.C. § 552 (b)(6) & (b)(7)(C).

Although it is not uncommon for customers to have multiple transactions in a day or two, it is uncommon that, at a convenience store, such multiple transactions total large dollar amounts. The SNAP transactions noted in the charge letter are questionable not because they exceed any limits for use, but rather because they display characteristics of use inconsistent with the nature and extent of Appellant's stock and facilities and are therefore indicative of trafficking. The photographs from the store visit offer no explanation as to why SNAP customers would routinely shop at Appellant multiple times during a short period to purchase such a large volume of items, there being no great variety of products, price advantage, profusion of large packages, or bulk items for sale.

Appellant contends the transactions on this Attachment are due to telephone orders. However, the store visit report, which the contractor completed in collaboration with store personnel, noted that the store did not offer telephone or online ordering. Appellant has offered no evidence whatsoever that the store offered telephone orders during the review period.

According to the contractor report, the store did not round transaction totals, offer packages or promotions, or employ an unusual pricing strategy that would result in the repeating transaction totals or “00” ending cents pattern. The highest priced item identified during the store visit was a ten-pound bag of Bens Rice priced at \$17.99. The store visit report and photos do not offer an explanation for the unusual transactions in Attachment 1. Appellant has not provided any explanation for the unusual patterns noted within this attachment, such as repeating transaction totals and endings cent patterns.

As Appellant has not offered compelling evidence or rationale that the transaction activity on Attachment 1 was the result of legitimate food purchases, it is reasonable to conclude that these transactions are the result of trafficking.

Charge Letter Attachment 2: EBT transactions that are large based on the observed store characteristics and recorded food stock. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The transactions in this charge letter attachment were all higher than 85% of all convenience store purchase transactions during the review period.

5 U.S.C. § 552 (b)(6) & (b)(7)(C). The store’s inventory and characteristics did not support the frequency of large transactions reflected in this attachment. Additionally, there is nothing notable about the store that would make its redemption patterns differ so significantly from those of similarly-sized competitors offering similar food items. Given that the store had no shopping carts or shopping baskets, the store was not conducive to large purchase transactions.

Within Attachment 2, there were unusual patterns of repeating transaction totals. **5 U.S.C. § 552 (b)(6) & (b)(7)(C).** As noted above, the store visit completed at the firm reported there were no special packages or bulk sales that would result in these transaction amounts. Consequently, when transactions cluster in large dollar totals without explanation, it appears that these amounts are contrived and, in the absence of compelling evidence to the contrary, are suggestive of trafficking.

In a case such as this one, which is based on an analysis of transaction data, Appellant must prove, through a preponderance of evidence, that the transactions detailed in the charge letter were more likely than not due to the legitimate sale of eligible food in exchange for SNAP benefits. In the absence of compelling information or documentation weighed in comparison to that provided by the Retailer Operations Division, the agency’s determination must be sustained.

Competitor Stores:

The Retailer Operations Division reviewed the number of SNAP authorized retailers within a one-mile radius of Appellant to determine if households living near Appellant had access to other shopping options during the review period. Mapping showed 83 additional SNAP authorized stores within the one-mile radius. This review demonstrates that households shopping at Appellant were nearby a larger store that may have lower prices and better inventory, making it less likely that SNAP recipients would expend their SNAP benefits in large amounts at Appellant’s convenience store, and that they would do so recurrently.

Household Analysis:

In addition to determining if households had access to other shopping options, the Retailer Operations Division conducted a household analysis to determine if households conducting suspicious transactions at Appellant actually utilized larger stores during the review period. As noted above, larger stores usually have lower prices and better inventory.

The analysis included examples of five households with unusual shopping patterns at Appellant that also regularly shopped at larger stores. 5 U.S.C. § 552 (b)(6) & (b)(7)(C). Despite access to larger, better stocked stores, these sampled households conducted multiple transactions in set time frames and transactions that were large based on the observed store characteristics and recorded food at 14th St. Deli Corp.

Comparison with Similarly Situated Convenience Stores:

The Retailer Operations Division compared Appellant's transaction activity to the transaction activity of two nearby convenience stores identified as carrying similar stock. Appellant had substantially more SNAP transaction sets made from the accounts of individual SNAP households within a set period and a noticeably higher percentage of large transactions based on the observed store characteristics and recorded food.

Appellant's inventory, characteristics, and location do not explain why Appellant had more frequent transactions meeting the parameters in the charge letter as compared to the nearby similarly situated convenience stores. If Appellant's arguments about store location, available stock, and SNAP household shopping habits were causing the questionable transactions at the subject store, it would be expected that similar patterns would exist at other nearby similarly stocked convenience stores. However, that is not the case.

Appellant's Responsibilities

Appellant insists that staff were trained in the proper handling of SNAP transactions and that the owner was unaware of any violations occurring at the store. When ownership signed the FNS application to become an authorized SNAP retailer, this included a certification and confirmation that the owner(s) would "accept responsibility on behalf of the firm for violations of the SNAP regulations, including those committed by any of the firm's employees, paid or unpaid, new, full-time or part-time." Regardless of whom the ownership of a store may choose to handle store business, ownership is accountable for the proper handling of SNAP benefit transactions.

Store Location

Appellant contends that the transaction activity identified by FNS results from the store's location and proximity of a large number of SNAP households. While this may be true, the Retailer Operations case analysis identified much larger stores located within one mile of Appellant, including seven large grocery stores, five supermarkets, and seven superstores. The closest supermarket was located 0.08 miles from Appellant. There is no basis for unusually high

customer attraction to Appellant, there being no great price advantage, profusion of ethnic goods, or special or custom services rendered.

Applicable Penalty

Appellant argued that a permanent disqualification is too harsh of a punishment. In the alternative, Appellant requested a six-month disqualification.

Neither the Food and Nutrition Act of 2008, as amended, nor the accompanying regulations cite any minimum dollar amount of cash or SNAP benefits, or number of occurrences, for such exchanges to be defined as trafficking. Nor do they cite any degrees of seriousness pertaining to trafficking of SNAP benefits. Trafficking is always considered to be extremely serious, even when the exchange of SNAP benefits for cash is dollar-for-dollar or is conducted by a non-managerial store clerk. This is reflected in the Food and Nutrition Act, which reads, in part, that disqualification "shall be permanent upon . . . the first occasion of a disqualification based on . . . trafficking . . . by a retail food store." In keeping with this legislative mandate, § 278.6(e)(1)(i) of the SNAP regulations states that FNS must disqualify a firm permanently if personnel of the firm have trafficked. There is no agency discretion in the matter of what sanction is to be imposed when trafficking is involved.

Civil Money Penalty

Appellant requests that it be assessed a trafficking CMP in lieu of a permanent disqualification. As noted earlier, the Retailer Operations Division determined that Appellant firm was not eligible for a CMP in lieu of permanent disqualification for trafficking because it did not submit sufficient evidence to demonstrate that it had established and implemented an effective compliance policy and program to prevent SNAP violations.

In accordance with regulations at 7 CFR § 278.6(b)(2), in order for a CMP to be considered, a firm must not only notify FNS that it desires the agency to consider a trafficking CMP in lieu of permanent disqualification, but it must also submit appropriate supporting documentation within 10 days of receipt of the charge letter. The case record shows that Appellant did not request a trafficking CMP or provide any evidence of a compliance policy or training program within the required 10-day period.

Therefore, in accordance with 7 CFR § 278.6(b)(2)(iii) and § 278.6(i), a civil money penalty in lieu of permanent disqualification for trafficking is not an option in this case.

CONCLUSION

An analysis of Appellant's EBT transaction record was the primary basis for the decision by the Retailer Operations Division to permanently disqualify 14th St. Deli Corp. from SNAP participation. This data provided sufficient evidence for this review to conclude that the questionable transactions and patterns listed in the charge letter were more likely than not the result of trafficking violations committed by Appellant. Likewise, Appellant has not proven, by a preponderance of the evidence, that the administrative action should be reversed.

Based on a review of all available information in this case, the decision to impose a permanent disqualification against Appellant, 14th St. Deli Corp., under the ownership of Gahiem Mosleh Ahmed Algahiem, is sustained.

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. If a judicial review is desired, the complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

AMIE CHURCHILL
Administrative Review Officer

March 2, 2023